

(2008) 07 GUJ CK 0094

In the Gujarat High Court

Case No : Special Civil Application No. 8465 of 2008

Prince Satyanarayan Khatik

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Citation : (2008) 07 GUJ CK 0094

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : H.R. Prajapati, for the Appellant; L.R. Pujari, AGP for Respondent 1 and A.M. Parekh, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Pujari, learned AGP waives service of notice of Rule for respondents No. 1 and 2 and Mr. Parekh, learned Counsel waives service of notice of rule for respondent No. 3.

2. The only aspect to be considered is whether the order passed by the State Government in appellate jurisdiction can be sustained without recording of the reasons or not?

3. The other aspects are not relevant, however, the relevant facts are that after the remand order is passed by the State Government, the District Collector considered the matter and vide order dated 24.3.2008, the licence and the authorisation for fair price shop was granted to the petitioner. The matter was carried in appeal by respondent No. 3 before the State Government. There are allegations, counter allegations and also disputes on the aspect that the proper opportunity of hearing was not given to the petitioner or not. However, in the opinion of the Court, the said aspect may not be of much importance in view of the order passed hereinafter.

4. It appears that the State Government pending the appeal had stayed the order of the District Collector and ultimately vide order dated 10.6.2008, set

aside the order of the Collector and observed that the respondent No. 3 was entitled for the authorization and licence for fair price shop and the appeal was allowed. It is under these circumstances the present petition before this Court.

5. Heard Mr. Prajapati, learned Counsel for the petitioner, Mr. Pujari, learned AGP for the State Authorities and Mr. Parekh, learned Counsel for the respondent No. 3.

6. The perusal of the order passed by the State Government shows that no reasons whatsoever are mentioned by the State Government for arriving at the decision that the petitioner is not entitled for the authorisation and the respondent No. 3 is entitled for the authorisation as per the policy of the Government. Had the record been considered and the reasons recorded by the authority this Court could undertake judicial scrutiny of the consideration, which had weighed to the State Government for allowing the appeal. But it appears that except mentioning that the case papers are studied and the merit of the qualification is considered, no other aspects are dealt with. Such reasons can be said as too vague and too general. It is by now settled that when the quasi judicial authority has to exercise the power, the reasons are required to be mentioned for supporting the ultimate operative order. Recording of the reasons is with two-fold purposes; one is to inform the party against him the decision is taken by way of compliance of the principles of natural justice and another is that if the matter is carried before the higher forum, proper judicial scrutiny can be undertaken if the reasons are mentioned. The impugned order does not satisfy either of it. Therefore, since no reasons are mentioned in the impugned order, the exercise of the power by the State Government as the appellate authority cannot be sustained.

7. The learned Counsel appearing for the petitioner as well as for the respondent raised the grievance that pending the proceedings of the appeal before the State Government, in spite of the stay order granted by the State Government, the authorization was continued, whereas Mr. Prajapati, learned Counsel for the petitioner did submit that prior to the said stay order, authorization was already granted. Be that as it may, if the final order of the State Government is quashed and set aside the consequence would be that that the appeal shall stand restored to the file of the State Government and the position as prevailing prior to the passing of the final order shall stand restored.

8. In view of the above, the impugned order dated 10.6.2008 passed by the State Government is quashed and set aside with the direction that the Appeal No. 25 of 2008 shall stand restored to the file of the State Government. It is further directed that the State Government shall decide the appeal afresh after giving opportunity of hearing to both the sides, as early as possible, preferably within a period of four weeks from the date of receipt of the order of this Court.

9. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.